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ABSTRACT

In this statement on H.R. 13343 presented to the Committee on Government Operations, the National Tribal Chairmen's Association, along with the National Congress of American Indians and the Alaska Federation of Natives, has voiced an "emphatic and uncompromising no" to the transfer of Indian education out of the Bureau of Indian Affairs (BIA) and into the proposed Department of Education. Exercising self-determination as mandated by the Indian Self-Determination and Education Assistance Act, numerous tribal governments have prepared responses to H.R. 13343. This testimony indicates 99.5% of the federally recognized tribes have said "no" to H.R. 13343. Among the many tribal statements quoted here are negative responses from the Shoshone Bannock, Southern Ute, Utah Ute, Mescalero Apache, Oneida, Colville Confederated and Comanche Tribes, the Yankton Sioux, the Red Cliff Band of Lake Superior Chippewa, Taos Pueblo, Picuris Pueblo, etc. Among the concerns presented by these and other tribal governments are the following: fragmentation of Indian education services, disregard for federal trust responsibility, disregard for Indian preference, elimination of schools separately established for Indians, undermining of tribal sovereignty, conflict with P.L. 93-638 and the contracting education programs that provide for Indian control, loss of BIA's working relationship with Indian tribal organizations, etc. (JC)

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STATEMENT OF

THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

TO THE

COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 13343

JULY 20, 1978

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Submitted on Behalf of the National
Tribal Chairmen's Association
Patricia Locke, Director
NTCA Education Components

RC010680

The National Tribal Chairmen's Association appreciates the opportunity to present testimony on H.R. 13343 before the Committee on Government Operations.

We are grateful that the Committee is willing to listen to the voice of the elected chairmen, presidents and chiefs of the federally recognized tribes on a matter so deeply affecting the very survival of the soverign tribal governments.

By soliciting our testimony, the Committee has assured us that there is respect for the wisdom and integrity of the thousands of tribal members when they elect their leaders to the tribal governing councils. We are confident that this manafestation of respect for tribal governments in their government to government relationship with the United States Government has been reinforced by the recent tribal interaction activities of the House Special Study Group on Indian Education. Repeatedly tribes throughout the country have told the Special Study Group that individual Indians cannot speak for tribal governments unless they have been so authorized; nor can organizations, groups or even presidentially appointed councils such as the National Advisory Council on Indian Education speak or make recommendations on behalf of or for the federally recognized tribes unless such organizations have been so authorized by the tribes.

The National Tribal Chairmen's Association, along with the other two major organizations that represent the federally recognized tribes in the United States, the National Congress of American Indians and the Alaska Federation of Natives, say an emphatic and uncompromising no to a transfer of Indian education out of the Bureau of Indian Affairs, Department of the Interior to the proposed Department of Education.

We say no to this transfer because over 99 and 1/2 % of the federally recognized tribes say no. The overwhelming majority of the tribes have thus exercised their legal right of tribal self determination by carefully considering the issues related to the proposed transfer. These deliberations have been made in the tribal council chambers. The NTCA respects the tribes right to determine the direction of education for their children now and in the future. We hope the Congress and the Carter administration will also hear the tribes.

It is incredible that a few in the U.S. Senate and in the Carter administration have heard the majority of tribes say no to the transfer and yet have ignored this exercise in self-determination as mandated by the Indian Self-Determination and Education Assistance Act.

It is incredible that a few non Indian people are, in this enlightened age, saying that the non-Indian knows what is best for Indian tribes.

The federally recognized tribes have determined that they do not want to be included in this proposed Department of Education as described in S. 991 and in H.R. 13343. The language to include the federally recognized tribes in both bills is totally rejected. Language in both bills is seen as a cosmetic attempt to hide the face of death.

To illustrate the tribes grave concern, please listen to a few tribal voices:

The Shoshone Bannock Tribes (Idaho) "We are convinced that, regardless of any assurance to the the contrar , to place our BIA and tribal schools in such a department, would lead to public school control of everything. ... we oppose very strongly any attempt to erode the basic structure, however gradual, of the current system. The tribes had no previous knowledge of the recommendations that the President's Reorganization Project had made until the April 10 and 11

meeting in Denver, Colorado (convened by the NTCA). The actions of the President of the United States to recommend transfer of the education functions out of the Bureau of Indian Affairs to a new department is outrageous."

Southern Ute Tribe (Colorado) "No we do not favor the transfer because such a transfer would be detremintal to the education of our Indian children. Creating another office does not solve the problem."

Yankton Sioux (South Dakota) "We do not favor the inclusion of the BIA schools in the new department. We feel we would be put into the mainstream of the U.S. education system which would make light of our concern over the control of Indian education by the Indians themselves."

Colorado River Indian Tribes (Arizona) "After all the years it has taken the Bureau of Indian Affairs to understand the operation of government schools for our youth, it would take much longer and more to orient a new department .... It is not a new department that is needed but implementation of the promises, goals and objectives that have been expressed in the past."

Red Cliff Band of Lake Superior Chippewa (Wisconsin) Our tribe and many others believe that the BIA has not been perfect in the past, but through years of struggle, turmoil and negotiation, we have gotten the BIA in a place where they are finally acting as the advocate and trust agency it was intended to be. We urge you to leave BIA education programs in the Indian Bureau / where we have guarantees of improved quality education programs while we have major unresolved issues with USOE. The USOE education progrms do not recognize a trust responsibility to Indian tribes. There are scandalous accounts of Indian education funds serving children of questionable Indian blood quantum. Reports from many states, such as Florida and Michigan have been produced which allege that children of 1/128 or 1/32 degree Indian blood are being served through the P.L. 92-318 programs.

The U.S.O.E has not implemented the federal policy of Indian preference in hiring in the administration of its Office of Indian Education programs. To the Indians, the U.S.O.E. endangers the special trust relationships provided through the treaties.

If BIA education programs are transferred to the Department of Education .... there is definite reason to believe that the U.S.O.E. policies and regulations would soon degenerate the legal intent of BIA education of Indian children."

Lac Courte Oreille Tribal Governing Board (Wisconsin) "We regard this proposed transfer as an effort to evade the trust responsibility and committments of the federal government. Protection of the trust relationship between tribes and the U.S. Government should remain strong. To abandon trust responsibility erodes the national credibility, and we then say before the world that our committments, agreements and promises cannot be relied upon and will do greater damage to our credibility, our national posture on human rights. We as a nation need to present good credentials to the world."

Taos Pueblo Government (New Mexico) " we concur in opposing the transfer of BIA education from the Interior Department to the new proposed Department of Education. We are disappointed that the Indian people were not consulted concerning important changes that will affect our lives."

Ute Indian Tribe (Utah) "Frankly speaking, we believe that there are some people, many of them Indians, who favor the transfer of all BIA education programs to another agency simply because they cannot meet the eligibility criteria that has been established by the BIA. We are informed that the National Advisory Council on Indian Education (NACIE) is being considered as the Board for the newly proposed Department. If so, we again oppose this action since we do not view the persons serving on the NACIE as tribal representatives..... Again, we have obtained a greater degree of expertise in the BIA school system to know

that a certain organized group of Indians cannot be deemed as representative of Indian tribes throughout the country simply because of their assumed status as Indians. There are some highly incorrect assumptions being made here by the Carter Administration. The Ute Indian Tribe would like to point out that we believe there are a few groups of people who are conveniently working under the pretense of Indian Education and they have intentionally misconstrued the spoken needs of Indian tribes. It is our belief that, as a result of the above, the Carter Administration, the Senate Committee on Governmental Afairs and various Congressmen and Senators are being led to believe that "Indian people do not know what is best for them." We have been informed that although Indian tribal representatives voiced unanimous opposition to S. 991 at a meeting at Denver, Colorado on April 10-11; a spokesman for the Office of Management and Budget reported to the Carter Administration that although there was opposition to the bill, the opposition was not fully substantiated and, therefore, ratification of S. 991 should be pursued."

Turtle Mountain Band of Chippewa (North Dakota) "We do not favor the inclusion of the BIA schools in the new Department. Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975, provides Indian tribes with the authority to have direct input and control of BIA education programs for Indian children. Our tribe has been directly involved at the grass roots level with Bureau of Indian Affairs Agency and Area Office education personnel and they have been responsive to our tribe's education concerns. Since the Bureau of Indian Affairs maintains a unique responsibility to our people, we feel a transfer could have an implication of termination of this responsibility.

Our schools have had experience with the Office of Education's Indian Education Title IV programs and we have not been satisfied with the administration, funding and delivery of these programs."

Public Law 93-638 gives our tribe the opportunity to become actively involved in evaluating and operating the Indian education programs and services operated by the Bureau of Indian Affairs."

Fallon Paiute - Shoshone Tribes (Nevada) "Under the present P.L. 93-638 Self-Determination and Education Assistance Act, Indian tribes are just now starting to develop and build their education programs, which they feel will benefit their children, It is felt that this should have been initiated long ago. If it had, the Indian tribes would not be so far behind school districts in the operation of education programs.

In some instances, at the present time there are tribes who are constantly in conflict with the State and County School Administrations as to the assistance being afforded their children.

If in your committee's considering the introduction of Legislation in the creation of a cabinet-level Department of Education, and it's eventual end is to revert authority back to the State Department's, it is felt that we would be going a step backwards in the continuing efforts to provide the opportunity of allowing the Indian people to progress forward."

Mescalero Apache Tribe (New Mexico) "We strongly feel that the Federal Government has a distinct and unique relationship to Indian people and Tribes through treaties, etc.; and should not lose this identity by lumping us and our special needs in with all other programs concerning education, for fear of being lost in a giant maze of educational gobbledygook.

We do not favor transferring the operational and policy responsibility of the Bureau of Indian Affairs schools to such a department, as the trend to more local Indian control of these schoolsneeds to continue rather than be relinquished."

Comanche Indian Tribe (Oklahoma) "The concept of including those educational functions now assigned to the Assistant Secretary of Interior for Indian Affairs in a new department of Education would not result in any improvement in Indian education systems. The transfer of the BIA-run school system to the Department of Education would lead to total elimination of schools separately established and identified for Indians. These existing schools would be placed in an atmosphere of extreme pressure resulting from excessive competition. Historically, smaller operations within government entities tend to become non-existant by assimilation because it is easier to exercise this approach rather than to justify continuation in a separate element. Recognizing that the present BIA-operated schools represent a small percentage of the total Indian students population does not necessarily dictate elimination. One might discover through careful study and examination that the uniqueness of this need still exists and should be continued. The fact is that Indians are many years behind other races, in terms of exposure to the non-Indian society's approach to education. This condition further dictates the need to continue an education system in a department separately organized to provide sorely needed services to Indian people."

Picuris Pueblo Tribal Council (New Mexico) We are writing you concerning our strong objection and alarm at the proposal to include Indian Education programs into the new department.

Oneida Tribe of Indians (Wisconsin) We are opposed to the transfer of any BIA programs to the new Department of Education because it would:

1. Ignore trust responsibility.
2. Fragment Indian education services
3. Validate the definition of an Indian as the Office of Education sees it, which in the majority of cases is in conflict with Tribal definitions of an Indian.
4. Ignore Indian preference.
5. Bring up the question of legality in connection with P.L. 93-638: The Indian Self-Determination Act.
6. Undermine tribal sovereignty.

Although the Indian Tribes have historically sought major changes in the handling of the education services within the BIA, until recently, when tribes were able to gain a measure of control over our education programs, the response to our recommendations have always been ill-conceived reorganization or apathy.

In Mr. Ribicoff's introduction of S.991 to the Senate he pointed out that "problems with our education system are worsening." In looking at the educational system as a whole, we agree with this statement, but if you only look at Indian Education, things are getting better. Since 1936 when the Oneida Tribal Constitution and By-Laws were approved, records show a total 29 Oneida students having received college degrees through 1975. Since the Oneida Tribe has taken over the administration of BIA Higher Education funds in 1975, there have been 27 Oneida students who have received degrees. In addition we are looking forward to another 19 graduated in June 1978. We feel the combination of tribal control and close motivation and follow-up with tribal students has been able to create this sucessful trend. It seems completely irrational to throw Indian programs, which are just beginning to see a measure of success, in with the overwhelmingly huge problem of Education on a national scale. This is in direct opposition to the trend that has allowed some success in Indian education programs. Local tribal control, local planning separate from the public schools, and relevant curriculm are some of the items that we feel have contributed to the success of Indian educational programs.

Villiage of Akiak (Alaska) "The citizens of Akiak are tired of different organizations trying to transfer the educational system to another form."

Colville Confederated Tribes (Washington) The United States Congress has enacted many pieces of legislation that clearly defines, recognizes and magnifies, the unique relationship of Federally Recognized Indian Tribes to the Federal Government in the area of Indian education. These Acts are as follows:

1. The Bureau of Indian Affairs Appropriation Act of February 14, 1920, authorized legislation for operation of Government Indian Schools or by paying the equivalent of non-resident tuition to Public School Districts enrolling Indian students.

2. The Snyder Act of November 2, 1921, 42 Statute 208, 23 USC § 13, provides for the expenditure of funds for education and other purposes, for the benefit, care, and assistance of Indians.

3. The Indian Reorganization Act of June 18, 1934, 48 Statute 986, 23 USC § 471, authorized educational loans to eligible Indians for Higher Education purposes.

4. The Johnson O'Malley Act (J.O.M.) of April 16, 1934, 48 Statute 59, as amended by the Act of June 4, 1936, 49 Statute 1458, provides financial assistance to Schools in their responsibility for educating Indians who are one-fourth (1/4) degree Indian blood of a Federally Recognized Tribe.

5. The Federal Impact Aid Act of August 12, 1958, Public Law 81-874, provides financial assistance to Schools for education Indian children.

6. The Indian Resources Development Act of 1967, its purpose was "... to provide Indians with managerial, credit and corporate tools to enable them to participate more fully in the Nations social, economic, education, and political life, and to permit them to exercise greater initiative and self-determination."

7. The Indian Education Act of 1970, Public Law 92-318, provides for financial assistance to Public Schools, Federally Recognized Tribes for Tribally Operated Schools and Programs for Indian Adult Education.

8. The Indian Self-Determination and Education Assistance Act, Public Law 93-638, of January 4, 1975, recognizes the "Congressional obligation of the United States to respond to the strong expression of the Indian people and Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian Self-Determination policy which will permit an orderly transition from Federal domination of education programs for services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of these programs and services."

In years past, the United States Congress has requested reports, investigations, and audits of the Bureau of Indian Affairs Education Programs. Since the submission of the Meriam Report in 1929, the United States Congress has time again and again recognized the unique relationship of Indian Tribes wtih the Federal Government through the following reports, investigations, and audits:

1. The Meriam Report of 1928.

2. Booz, Allen, and Hamilton Report of the 1940's "...carry out of its (Bureau of Indian Affairs) trust responsibility and the conduct of termination minded policies and programs."

3. Bimson Report of 1953, "... changing from a trust responsibility to one of community and economic development."

4. Secretary of Interior's Stewart Udalls, Bureau of Indian Affairs Task Force, Declaration of Interior Purpose, 1961, "... that the individual tribes knew better than the Government what kind programs they needed and wanted, and that if they could play decisive roles in the planning of such programs, they could, with technical assistance and financial assistance, demonstrate an ability to learn quickly to administer and execute them successfully."

5. Commission on the Rights, Liberties, and Responsibilities of the American Indian, 1961, "No program imposed from above can serve as a substitute for one willed by Indians themselves."

6. Interdepartmental Committee (Health, Education, and Welfare - Interior) on Education, 1966, the Report recommended against a transfer of Education to Health, Education, and Welfare from Interior, noting the Health, Education, and Welfare had never operated a school system and did not possess the personnel or fund of knowledge about Indians necessary to run a school systems for them. and that although the Bureau of Indian Affairs system possessed serious shortcoming, it did have a background of knowledge about Indians and could, with necessary changes and improvements, run the system as it might be run by Health, Education and Welfare.

7. Senator McGovern's New Indian Policy, 1966, on October 13, 1966, Senator McGovern introduced in the Senate a concurrent Resolution which enunciated a new Indian policy for the Nation. One of its purposes was to set to rest the Indians renewed fears of a revival of the termination policy, but, more importantly the Resolution provided a strong, new thrust for the goals which the Indians themselves had been proclaming.

8. The Kennedy Report of 1967.

9. The Indian: The Forgotten American, June 1968, by Warren H. Cohen and Philip J. Mause, "The Bureau of Indian Affairs possesses final authority over most tribal actions as well as over many decisions made by Indians as individuals. Bureau of Indian Affairs approval is required, for example, when a tribe enters into a contract, expends money, or amends its constitution. Although normal expectation in American society is that a private individual or group may do nothing unless it is specifically prohibited by the government, it might be said that the normal expectation on the reservation is that Indians may not do anything unless it is specifically permitted by the government."

10. President Johnson's message to Congress, 1968, "... direct the Secretary Interior to establish and train Indian Parent SchoolBoards for Federal Indian Schools."

11. The House Investigation Report on School Construction of the Bureau of Indian Affairs, 1977.

12. Comptroller General's Report to Congress on the Indian Self-Determination Act -- Many Obstacles Remain, March 1, 1978.

13. Comptroller General's Report to Congress - Tribal participation in the Bureau of Indian Affairs Budget Systems should be increased, February 15, 1978.

14. Comptroller General's Report to Congress - Controls are needed over Indian Self-Determination Contracts, Grants, Training, and Technical Assistance Activities to Insure Required Services are Provided to Indians, February 15, 1978.

15. The Presidential Task Force on the American Indian, 1968, reported against transferring Bureau of Indian Affairs functions to Health, Education and Welfare.

In fiscal Year 1978, the Colville Tribe has thirteen (13) Public Law 93-638 Contracts totaling $1.3 million (1/3 of the Colville Agency Budget) and three (3) Public Law 93-638 Grants totaling approximately $140,000. The Colville Tribe has utilized this legislation to re-structure Bureau porgrams so that fragmented education, training, and employment services can be coordinated and dovetailed into a total Tribal effort for career development possibilities for its members.

There are fifty-four (54) total staff members directly involved in providing direct services of education, employment, and vocational training to our people. To date the focus of the administrative effort has been on establishing inter-program as well as intra-program communications and coordination, for the purpose of maximizing program effectiveness, increase services, and to expidite the overall development of programs. New processes that have been established, and old procedures have been streamlined to allow for better money management and to avoid duplication of services.

Full funding from the Bureau of Indian Affairs for Tribally Operated Schools has not yet been accomplished, as authorized by Title II, Part C, Section 208 of the Act. The Assistance thus far provided, and augmented from other from

other sources, has made possible the development of an exciting new era in Indian education, and bodes well for the future.

Indian people, because of the Act, have arrived on a new threshold, and expectations are running high. Indian involvement, long the missing ingredient in Indian education is now being achieved through the contracting procedures set up by Public Law 93-638. If the Bureau of Indian Affairs is allowed to continue contracting under the Act, the long lingering problem of Indian education will be on its way to solution.

Success can be achieved in Indian education through the Bureau of Indian Affairs structure, if we continue to be persistant in our endeavors to develop basic education that includes recognition of our culture and heritage, utilize fully the authorities of Public Law 93-638 in contracting education programs from the Bureau of Indian Affairs.

Our recommendations are: That all Indian designated funds for Indian education program presently operated by the Office of Indian Education, Department of Health, Education and Welfare be transferred to the Bureau of Indian Affairs for management with designated ceiling positions;
That Congress continue to audit and review the status and implementation of Public Law 93-638 to insure that Congressional intent is achieved versus protecting the existing bureaucracy.

The Makah Tribal Council (Washington) The Makah Tribal Council vehemently opposes the Bills to transfer education out of the Bureau of Indian Affairs, Department of the Interior. The Makah Tribal Council firmly believes that education must remain within the Bureau of Indian Affairs in order to assure the development of a comprehensive Indian Education strategy and delivery in keeping with the guarantees of trust responsibility of the Department of the Interior. The experience of the Makah Tribe has shown that DHEW has trouble defining who is an

Indian, does not consistantly promote Indian preference, does not sufficiently serve or hire Indians in its programs such as Bilingual Education, Bureau of the Handicapped, Fund for the Improvement of Post Secondary Education, Ethnic Heritage Act, or the National Institute of Education among others, nor does the Office of Indian Education adequately serve the federally recognized Tribes. The Makah Tribe believes that the Administration's intent to dismantle the Bureau of Indian Affairs is an overt action to terminate the federally recognized tribes

Miccosukee Tribe of Indians (Florida) To move all education programs to the new department is most objectionable from our point of view. First of all, the BIA's understanding of Indians, its working relationships with Indian tribal organizations and tribal governments, the standard operating procedures of this bureaucracy which over many years have evolved because of the Indian environment of the Bureau -- all these would be lost by the transfer of Indian education to the new department.

As far as cost effectiveness is concerned, we feel that the creation of a centralized department will not be less costly, but will simply add another tier of expensive government positions to the bureaucracy. Presumably, the education functions of the BIA's Central Office and of the area offices would be taken over into the new department, but it is difficult to see how the move would be inexpensive.

We do not think the existing set-up is perfect. We would like to see a reorganization of the BIA, not a transfer of it or of part of it to another department. Specifically, we feel that the Bureau should itself become a cabinet-level department to maintain its own standard operating procedures and to increase the effectiveness of its avenues to advocacy and its ability to resist the pressures from economic interests to which it is presently subject.

The ConfederatedSalish and Kootenai Tribes of the Flathead Reservation (Montana) "The greatest hope of the Indian people for the future is to strive for a unified war encompassing the political, social, and economic fronts. Education must remain an intergral part of the battle to promote the general welfare of Indian people on these fronts. To advocate for the principals encompassed in H. R. 13343 - S. 991, would be to sell-out the future of our Indian children.

At the present time, it is nct in the best interest of Indian people to support the concepts embodied in H.R. 13343 and S. 991, Rather we must marshall our energies and efforts to attain the present educational programs within the Bureau of Indian Affairs and expand the leadership under the Bureau in the field of Indian education to include enlightened education for all Indian children regardless of whether they attend Bureau schools, public schools, contract schools, Tribal schools, or private schools.

The Indian people must espouse and demand that Indian Education policy become the major instrument and extension of the policy of Indian Self-Determination. To fragment policies and programs vital to the American Indians will be another tragic error in the relationships of the federal government and the Indian people.

How can the administration endorse this transfer of programs in this so-called era of self-determination? How do we as Indian people maintain any form of self-identity or self-reliance when the administration is recommending that our real hope for the future - the education of our youth - be taken from our hands. We, as Indian people, are bound to loose under the concept that these two bills are presenting."

The above expressions of concern are representative of only a few of the many letters and telephone calls that have come in to our offices in the past 11 months. The 201 federally recognized tribal entities of the Alaska Federation of Natives have joined the voices of the other 280 plus federally recognized tribal entities represented by our organizations.

H.R. 13343 does not adequately address the concerns of the tribes. We ask that the Committee on Governmental Operations listen to the voice of the federally-recognized tribes when they ask that "our real hope for the future- the educating of our youth - not be taken from our hands."